Legal Issues Violated

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Request of Subcommittee on Civil and Constitutional Rights

This is in response to your memorandum of November 12, 1975 requesting the Criminal Division to prepare the response to the list of questions entitled: Legal Issues Regarding Violations of FBI Rules (submitted to the Attorney General by the House Subcommittee on Civil and Constitutional Rights). Our response to the numbered questions are as follows:

I & II. 18 U.S.C. 2071, in pertinent part, prohibits the unlawful concealment, removal, mutilation, obliteration or destruction of any record, paper, document or other thing filed or deposited in any public office or with any public officer of the United States. McInerney v. U.S. 143 F. 729 (D. Mass. 1906)

Conduct violative of 18 U.S.C. 2071 may also constitute a violation of 18 U.S.C. 1505 (obstruction of justice) if the destruction, or other prescribed treatment of the subject record or paper, is for the purpose of influencing, obstructing or impeding the due and proper administration of the law under which a proceeding is being had before a department or agency of the United States, or the due and proper exercise of the power of inquiry under which an inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress. U.S. v. Fruchtman 421 F. 2d 1019 (6th Cir. 1970), cert. denied 400 U.S. 849.

III. Any individual who, having taken an oath, knowingly submits a false statement or testifies falsely concerning some material fact, may be

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charged, depending on the forum, with a violation of 18 U.S.C. §§ 1621 (perjury) or 1623 (false statement). Holy v. U.S. 278 F. 2d 521 (7th Cir. 1921), Gebhard v. U.S. 422 F. 2d 281, 287-288 (9th Cir. 1970), U.S. v. Nicoletti, 310 F. 2d 359 (7th Cir. 1962)

Perjured testimony or false statements which obstruct, or attempt to obstruct proceedings before departments, agencies and committees may constitute a violation of 18 U.S.C. 1505 (obstruction of justice) even if the gravamen of the obstruction is that the individual perjured himself. U.S. v. Alo 439 F. 2d 751 (2nd Cir. 1971) cert. denied 404 U.S. 850.

An individual, under oath, has the duty to testify truthfully concerning any matter regardless of whether or not that matter [or conduct] is punishable by the federal criminal law. U.S. v. Worchester 190 F. Supp. 548, 569 (D. Mass. 1960).

IV. 18 U.S.C. § 3282 provides that for non-capital offenses "no person shall be prosecuted, tried, or punished for any offense . . . unless the indictment is found or the information is instituted within five years next after such offense shall have been committed." The statute of limitations begins to run when the crime is complete; i.e. from the date of the last overt act. U.S. v. Andreas 374 F. Supp. 402 (D. Minn. 1974). The statute is not tolled by the non-discovery of the offense during the statutory five-year period.

V. To constitute a violation of 18 U.S.C. § 4 (misprision of felony) it is necessary that an individual take "some affirmative act of concealment . . . or other positive act designed to conceal from

the authorities that a crime has been committed." Bratton v. U.S. 73 F.2d 975 (10th Cir. 1934), U.S. v. King 402 F. 2d 694, 697 (9th Cir. 1968), Neal v. U.S. 102 F. 2d 643 (8th Cir. 1939). Under existing judicial constructions it is not sufficient for the purposes of an 18 U.S.C. § 4 violation that an individual has knowledge of a crime committed by another and remains silent.

VI & VII. We suggest that the Office of Legal Counsel and the Office of the Watergate Special Prosecution Force be requested to search their files for information pertaining to cases involving government employees destroying or removing records, documents or papers in their custody or from public offices in connection with the non- disclosure of violations of agency rules or federal criminal law.